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**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA – LAS VEGAS**

BRADLEY STEPHEN COHEN, an individual;
 and COHEN ASSET MANAGEMENT, INC., a
 California corporation,

 Plaintiffs,

 vs.

 ROSS B. HANSEN; NORTHWEST
 TERRITORIAL MINT, LLC, a Washington
 limited liability company; and STEVEN EARL
 FIREBAUGH,

 Defendants.

Case No. 2:12-cv-01401-JCM-PAL

**CONCISE STATEMENT OF
 MATERIAL FACTS NOT GENUINELY
 IN DISPUTE IN SUPPORT OF
 DEFENDANT'S MOTION FOR
 SUMMARY JUDGMENT**

In support of the Motion for Summary Judgment filed herewith, the following is a concise statement of material facts not genuinely in dispute.

Fact

**ON THE DESCRIPTION OF THE
 PARTIES**

1. Plaintiff Bradley S. Cohen is a
 well-known real estate investor in Los
 Angeles, California.

Source

1. Plaintiffs' First Amendment
 Complaint, ECF 40 (hereinafter "FAC"), at ¶
 13.

1	2. Plaintiff Bradley S. Cohen is the	2. FAC at ¶ 13
2	president and chief executive officer of	
3	Cohen Asset Management (hereinafter	
4	“CAM”), a California-based company.	
5	3. CAM is a real estate operator,	3. Deposition of Scott McGinness
6	which acquires property on behalf of	(hereinafter “McGinness Dep.”), at 16:11-14
7	investors, runs the property, and provides	
8	returns to those investors.	
9	4. Both Cohen and CAM are	4. FAC at ¶¶ 1-2
10	domiciled within the Central District of	
11	California.	
12	5. CAM creates a number of	5. McGinness Dep. at 23:11-23
13	affiliated entities to own and manage the	
14	various properties it acquires.	
15	6. CAM and its affiliated entities	6. FAC at ¶ 13
16	have industrial and office properties	
17	nationally, with a current estimated value of	
18	“several hundred million dollars.”	
19	7. In 2013, CAM’s investments	7. McGinness Dep. at 47:9-21,
20	currently have a higher value than they did	49:11-50:17.
21	five years ago, it has investments in more	
22	property than it did five years ago, and more	
23	of CAM’s employees in 2013 have a salary	
24	of more than \$150,000 than five years prior.	
25	8. Bradley Cohen frequently	8. FAC at ¶ 13; Deposition of
26	appears as a guest speaker at national real	Bradley Cohen (hereinafter “Cohen Dep.”). at
27	estate events.	33
28	9. Bradley Cohen has been honored	9. FAC at ¶ 13

1 by such organizations such as Boy Scouts of
 2 America, Cedars Sinai Medical Center, and
 3 Friends of the Israeli Defense Forces.

4 10. Bradley Cohen has received
 5 numerous awards and recognitions from
 6 local, state, and national government
 7 officials, including President George W.
 8 Bush and Vice-President Al Gore.

9 11. Cohen has spoken at real estate
 10 investing conferences in the past and has
 11 traveled to France on behalf of one
 12 organization.

13 **ON THE AUBURN VALLEY INDUSTRIAL**
 14 **CAPITAL LLC V. NORTHWEST**
 15 **TERRITORIAL MINT LITIGATION**

16 12. Auburn Valley Industrial Capital,
 17 LLC (“AVIC”) is an affiliate of CAM.

18 13. Northwest Territorial Mint leased
 19 property from AVIC.

20 14. AVIC sued Northwest Territorial
 21 Mint for lease violations, alleging that
 22 Northwest Territorial Mint had
 23 environmentally contaminated the property
 24 they leased from AVIC.

25 15. AVIC was granted a money
 26 judgment against NWTM.

27 16. AVIC’s damages, and award of
 28 attorneys’ fees against NWTM, are currently

10. FAC at ¶ 13; Photos of Awards,
 attached as Exhibit A; Reha Dep. At 202-25

11. Cohen Dep. at page 33; Bradley
 S. Cohen Curriculum Vitae, attached as Exhibit
 B.

12. FAC at ¶ 31.

13. FAC at ¶ 28.

14. FAC at ¶ 31

15. FAC at ¶ 31

16. FAC at ¶ 31

on appeal.

ON DEFENDANTS' USE OF THE WEBSITES

17. In 2012, Defendant Ross Hansen developed two websites about Plaintiffs.

18. The websites ask the question whether Cohen is "the next Bernie Madoff."

19. One of the websites was formerly located at <bradley-cohen.com>, and one is currently located at <bradleyscohen.com>.

20. The websites feature Defendant Hansen's opinions about Plaintiffs and their business practices.

21. The websites were registered and hosted anonymously and allowed for third-party comment and participation.

22. The information about Plaintiffs on the website was based on Hansen's experiences with Plaintiffs, conversations he had with CAM employees, and documents found through Internet searches.

23. Hansen says his primary purpose in publishing the websites was a "public service" to the community.

24. Hansen gave final approval on all of the content contained on the websites.

25. Hansen says Defendant Steven

17. Deposition of Ross B. Hansen (hereinafter "Hansen Deposition") at 31:13-21

18. Front Page of <bradleyscohen.com>, attached as Exhibit C at 1

19. Front page of <bradley-cohen.com>, attached as Exhibit D; Cohen Dep. at 179; Exhibit C

20. Hansen Dep., at page 43

21. Hansen Dep. 172:16-25; Exhibit C at 7

22. Hansen Dep. at 85:19-86:7

23. Hansen Dep. at 34:12-24

24. Hansen Dep. at 131:4-132:19

25. Hansen Dep. at 132:25-133:2

1 Firebaugh's involvement was "minimal."

2 26. The registrar shut down the
3 website <bradley-cohen.com> in 2012.

4 27. <bradleyscohen.com> is still
5 operational.

6 **ON DAMAGES CLAIMED BY**
7 **PLAINTIFFS**

8 28. Plaintiffs allege no actual
9 damages from the operation of the websites.

10
11
12 29. Plaintiffs have been unable to
13 assert any demonstrable loss of income or
14 other loss of business resulting from the
15 content of Defendants' websites.

16 30. Cohen recently lost weight since
17 discovering the website, described by friend
18 Steven Fishman as a "positive" change
19 attributed to working out.

20 31. Plaintiffs are on track to have a
21 profitable 2013 – even more profitable than
22 2012 when the Websites came into
23 existence.

24 32. Plaintiff Cohen claims that the
25 websites have caused him emotional
26 distress.

27 33. Financially, Cohen and CAM are
28 both doing well.

26. FAC at ¶ 50

27. FAC at ¶ 9

28. CAM's Responses to
Interrogatories, attached as Exhibit E, at 2-5;
Bradley S. Cohen's Responses to
Interrogatories, attached as Exhibit F, at 2-6

29. McGinness Dep. at 63; Cohen
Dep. at 114:6-15; Exhibit E; Exhibit F

30. Deposition of Steven Fishman
(hereinafter "Fishman Dep.") at 38:21-39:4

31. McGinness Dep. at 99:7-100:7;
ECF 40 ¶ 9; Hansen Dep. at 31:13-21

32. FAC ¶ 77

33. FAC ¶ 80; Fishman Dep. at
38:21-39:4

ON THE STATEMENTS MADE ON THE WEBSITES

34. The statements have been seen within the State of California.

35. All of Plaintiffs' claims arise from state law.

36. The comparison of Bradley Cohen to Bernie Madoff focuses on the facts: That Madoff and Cohen were both members of various boards of directors, that they made political contributions, that they both worked in the investment field, and that they were both the eponymous heads of their respective investment firms.

37. The websites overseen by Defendant Hansen state that Cohen leads a life of "glamour" and "luxury."

ON PLAINTIFFS' STATUS AS PUBLIC FIGURES

38. Plaintiffs' business is available to members of the public, so they may participate and invest for Plaintiffs' economic benefit.

39. In the past, Cohen has not shied away from receiving public recognition for his accomplishments and involvement

34. Fishman Dep. at 13:16-14:22; Cohen Dep. at 108:12-109:2; Deposition of Jeffrey (hereinafter "Stern Dep.") at 7:19-24, 25:8-15; FAC at 23-25

35. FAC at ¶23-25

36. Exhibit C at 1-2; Exhibit D at 1-2

37. Exhibit C at 1-3, 12; Exhibit D at 1-3, 8, 11

38. Cohen Dep. at 161:10-21; McGinness Dep. at 39:24-40:4, 71:12-19; Fishman Dep. at 103:12-104:1

39. Exhibit A; Deposition of Justine Reha, (hereinafter "Reha Dep.") at 20:16-25:15

1 within the community.

2 40. CAM has been a member of the
3 National Association of Real Estate
4 Investment Managers (NAREIM).

5 41. Cohen has been a member of
6 NAREIM's board.

7 **ON THE HOSTING AND REGISTRATION**
8 **OF THE WEBSITES**

9 42. The Websites and their domain
10 names were registered anonymously and
11 were hosted outside the United States.

12 **ON PLAINTIFFS' STATEMENTS ABOUT**
13 **CAM'S CORPORATE STRUCTURE**

14 43. Cohen does not know how
15 someone with a high school education or
16 without real estate training would have
17 trouble understanding CAM's operations.

18 **ON DEFENDANTS' STATEMENTS**
19 **ABOUT CAM'S CORPORATE**
20 **STRUCTURE**

21 44. The websites stated that
22 Plaintiffs' business is structured as an
23 "intricate web" and "elusive and complex
24 web."

25 45. The websites overseen be
26 Defendant Hansen opined that CAM and its
27 affiliate company are "attempting to scam
28 former tenants out of millions of dollars"

40. Cohen Dep. at 36:22-37:3, 78:8-
12

41. Cohen Dep. at 36:22-37:3, 78:8-
12; Exhibit B

42. Firebaugh Dep. at 40:5-41:14;
Hansen Dep. at 160:6-9; FAC ¶¶ 56-57

43. Cohen Dep. at 262:9-21

44. Exhibit C at 2, 3, 6; Exhibit D at
2-3, 34

45. FAC 40 ¶ 42, Exhs. 1, 3

1 and “complex.”

2 46. The websites state that Plaintiffs
3 are glamorous, prestigious, wealthy and
4 fortunate.

5 47. Defendants’ used question marks
6 to ask questions about Plaintiffs’ business
7 and financial condition.

8 **ON WITNESS’ INTERPRETATION OF**
9 **THE STATEMENTS MADE ON THE**
10 **WEBSITES**

11 48. Witnesses acknowledge that the
12 statements made on the websites could be
13 opinions.

14 **ON THE CAM CORE+ FUND 1**

15 49. The Cam Core+ Fund 1 LLC was
16 funded with 85 million dollars and used to
17 purchase commercial and industrial real
18 estate.

19 50. These individual properties
20 within the Cam Core+ Fund 1 are owned by
21 individual limited-liability companies
22 created for the sole purpose of owning a
23 particular property.

24 51. In some cases, one limited-
25 liability company may own more than one
26 piece of property within the Fund.

27 52. CAM Core+ Fund 1’s value was
28 accounted on a fair market value basis,

46. Exhibit C at 2-4; Exhibit D at 2-
7, 34

47. Hansen Dep. at 57:21-58:20

48. Deposition of Leslie Westreich at
55:5-22

49. McGinness Dep. at 35:2-36:16

50. McGinness Dep. at 36:17-21

51. McGinness Dep. at 36:17-37:4

52. Cohen Dep. at 186:10-188:5;
McGinness Dep. at 25:6-8, 82:2-14, 87:23-

1 where the value of the properties comprising
2 the Fund's assets was calculated based on
3 what they could be sold for on the prevailing
4 market on a regular basis.

5 53. The fair market value of the
6 Fund's assets was "written down," or
7 decreased, by over \$45 million between
8 2008 and 2010.

9 54. Plaintiffs' position is that because
10 the Fund's assets have not been liquidated,
11 no loss has been realized.

12 55. By late 2010, the real estate
13 assets within the funds had declined \$45
14 million in value.

15 56. Plaintiffs claim that it is
16 defamatory for Defendants to say investors
17 "lost" money because the asset had not been
18 sold, precluding any loss from being
19 "realized."

20 **ON THE WEBSITES' CHARTS AND**
21 **REPRESENTATIONS OF PLAINTIFFS'**
22 **LOSSES**

23 57. The chart titled "Total Return
24 Composition Net of Fees As Of 9/30/2010"
25 is a direct copy from CAM's 3d Quarter
26 Financial Report.

27 58. CAM's analysis of its total assets
28 and the Defendants' chart depicting the same

88:13; Summary of Scott McGinness, attached
as Exhibit H, at 3

53. Exhibit H at 3

54. McGinness Dep. at 83:4-14,
87:23-88:13, 91:14-92:3; Cohen Dep. at 185:22-
186:8

55. Exhibit H at 3

56. Cohen Dep. at 185:22-186:8;
McGinness Dep. at 83:4-14

57. Exhibit C at 6; Exhibit D at 9;
ECF 40-1 at 8

58. Exhibit H at 1; Exhibit C at 5;
Exhibit D at 8

1 show the exact same starting and ending
2 points.

3 59. CAM's analysis shows a more
4 precipitous drop in total assets from the first
5 to the second quarter in 2010 than
6 Defendants' depiction.

7 60. Plaintiffs attempt to rebut
8 Defendants' depiction of their decrease in
9 cash and cash equivalents with a chart of
10 "Cash & Restricted Cash."

11 61. Both Defendants' and Plaintiffs'
12 chart show a steep decrease in both "cash
13 and cash equivalents" and "Cash &
14 Restricted Cash" from January 2009 to
15 January 2010.

16 **ON THE WEBSITES' STATEMENTS**

17 **ABOUT BRADLEY COHEN'S LIFESTYLE**

18 62. Mr. Cohen's house is located
19 within Bel Air and estimated to be worth at
20 least 15 million dollars – likely more than 20
21 million dollars.

22 63. Mr. Cohen's house is around
23 11,000 square feet in size.

24 64. Defendants included a photo of
25 Mr. Cohen's house on the websites for
26 readers' reference.

27 65. The photograph of Mr. Cohen's
28 house was taken from a website that was

59. Exhibit H at 1 and Exhibit C at 5,
Exhibit D at 8

60. Exhibit H at 2-3

61. Exhibit H at 1 and Exhibit C at 6;
Exhibit D at 9

62. Cohen Dep. at 82:17-83:5;
Fishman Dep. at 82:2-7

63. Cohen Dep. at 80:21-81:18

64. Exhibit C at 12; Exhibit D at 11

65. Firebaugh Dep. at 90:11-91:3

1	already accessible to the general public.	
2	66. Mr. Cohen refinanced his	66. Cohen Dep. at 83:6-16
3	mortgage on the residence in 2009 to take	
4	advantage of remarkably low interest rates –	
5	around only 1% per year.	
6	67. Even since the economic	67. Bradley S. Cohen Income
7	recession that began in 2008, Cohen has	Summary, attached as Exhibit I; Fishman Dep.
8	made more than 1-3 million dollars per year	at 84:11-87:7, 90:10-91:10
9	in gross income every year.	
10	68. Prior to the 2008 downturn,	68. Exhibit I; Fishman Dep. at
11	Cohen’s annual gross income was as high as	84:11-87:7, 90:10-91:10
12	over five million dollars.	
13	69. Cohen estimates his personal net	69. Cohen Dep. at 98:6-25
14	worth to be more than 50 million dollars.	
15	70. Cohen invests in every property	70. Cohen Dep. at 247:4-7
16	managed by CAM.	
17	71. Cohen and his wife have given	71. Cohen Dep. at 73:9-74:12
18	hundreds of thousands of dollars to charity,	
19	some of which came in “smaller amounts of	
20	10,000 [or] 25,000” dollars.	
21	72. Cohen employs an undisclosed	72. Cohen Dep. at 56:9-16
22	personal security detail.	
23		
24	ON THE WEBSITES’ COMPARISON OF	
25	BRADLEY COHEN TO BERNIE MADOFF	
26	73. Cohen founded CAM, a real	73. Cohen Deposition at 161:10-16
27	estate investment firm.	
28	74. CAM investors must be	74. Cohen Deposition at 161:10-12;

1	accredited investors under Securities and	McGinness Deposition at 39:24-40:4
2	Exchange Commission Rule 501 of	
3	Regulation D.	
4	75. Some individual securities within	75. Cohen Deposition at 243:21:-
5	the companies that own property managed	244:18; Offering Memo, attached as Exhibit J at
6	by CAM are sold for \$100,000 each.	1
7	76. Cohen's own accountant invested	76. Fishman Deposition at 103:12-
8	– and lost – \$50,000 with CAM.	104:1
9	77. CAM investors identified in this	77. Decl. of Westreich ¶¶ 1-2; Decl.
10	litigation represent or control institutional	of Bruce Batkin ¶ 3
11	investors, such as pension funds, real estate	
12	investment companies, and investment	
13	funds.	
14	78. CAM's office is located in	78. McGinness Deposition at 71:20-
15	Century City, California.	22
16	79. The Websites state that Cohen	79. Exhibit C at 2; Exhibit D at 2
17	has "overall responsibility for management	
18	of his firm, strategically directs investment	
19	funds."	
20	80. CAM's investment committee	80. Investing Committee Document,
21	makes investments by majority rule, but	attached as Exhibit K; McGinness Dep. at
22	requires Cohen to be part of the majority	29:16-30:3
23	vote in order to take action.	
24	81. CAM is headquartered on the	81. Cohen Deposition at 171:9-10;
25	Avenue of the Stars in Century City,	ECF 40-4 at 29
26	California.	
27	82. Other companies with office on	82. Avenue of the Stars Composite
28	the Avenue of the Stars include: 1) Creative	Exhibit, attached as Exhibit L

Artists Agency; 2) DLA Piper; 3) McKinsey & Company, a management consulting firm; 4) JP Morgan; 5) Moelis & Company, a bank; 6) Susman Godfrey LLP, a law firm; and others.

83. Cohen is a member of the Board of Governors at Cedars Sinai Medical Center and served on the National Board of the Friends of the Israeli Defense Forces.

84. Cohen has made political contributions worth tens of thousands of dollars per year in the past.

ON THE WEBSITES' COMMENTS

ABOUT CAM'S WEB OF COMPANIES

85. Defendants created charts showing the connections between Cohen, Brandon Delf, and numerous limited-liability companies on their Websites.

86. The Websites describe Cohen's relationship with these companies as a web, describing it as complex and intricate.

87. Doreen Ray, CAM's Executive Vice President of asset management described the structure of CAM's asset management as "multilayered."

88. Cohen does not know exactly how many companies for which he is an officer.

83. FAC ¶ 13; Deposition of Cheryl Cohen (hereinafter "Cheryl Cohen Deposition") 12:11-15, 12:24-13:4

84. Cohen Deposition at 177:4-178:21

85. Exhibit C at 7, 15; Exhibit D at 10, 18

86. Deposition of Doreen Ray (hereinafter Ray Deposition) at 140:9

87. Ray Dep. at 140:9

88. Cohen Dep. at 41:6-42:5

1	89. Cohen invests in every deal made	89. Cohen Dep. at 97:1-24, 247:4-7
2	by CAM by becoming a member of the	
3	limited-liability company used to purchase	
4	and own property.	
5	90. The properties owned by these	90. Cohen Dep. at 245:21-247:3
6	CAM-affiliated limited-liability companies	
7	(also known as investment vehicles) are	
8	managed by a separate company created by	
9	CAM.	
10	91. CAM receives a 20%	91. Cohen Dep. at 245:21-247:3
11	promotional interest of the property's	
12	revenue and value for managing the	
13	property.	
14	92. CAM's promotional interest in	92. Cohen Dep. at 247:2-3
15	each property that CAM manages ultimately	
16	is paid to CAM and Cohen himself.	
17	93. There are hundreds of limited-	93. Cohen Dep. at 245:21-247:3
18	liability companies affiliated with Cohen	
19	and CAM executives are members.	
20	94. The limited-liability companies	94. Cohen Dep. at 245:21-247:3
21	affiliated with CAM, which act as	
22	investment vehicles, distribute 80% of their	
23	earnings to their members.	
24	95. The remaining 20% of the	95. Cohen Dep. at 245:21-247:3
25	limited-liability companies' earnings are	
26	paid to one of the CAM affiliated managing	
27	entities that is created to manage the	
28	investment vehicles.	

1	96. Cohen states that his investment	96. Cohen Dep. at 274:8-15
2	structure of investment vehicles and	
3	affiliated companies is an industry standard	
4	and practice.	
5	ON CAM EMPLOYEES' KNOWLEDGE	
6	OF CAM OPERATIONS AND COHEN'S	
7	FINANCES	
8	97. Doreen Ray is an executive vice	97. Ray Dep. at 142:20-22
9	president at CAM.	
10	98. Defendants state on the website	98. Exhibit C at 4-5; Exhibit D at 7-8
11	that Doreen Ray was "uncomfortable	
12	answering questions" about Cohen and his	
13	finances.	
14	99. Doreen Ray admitted that she	99. Ray Dep. at 145:13-146:2
15	was uncomfortable being asked anything	
16	about Cohen individually when testifying as	
17	the party most knowledgeable for AVIC.	
18	100. Based on the context of her	
19	deposition, Ray declined to answer questions	100. Ray Dep. at 144:18-146:2
20	about Cohen or CAM beyond AVIC, and	
21	herself stated she was "uncomfortable"	
22	answering questions about matters other	
23	than AVIC.	
24	ON CAM'S OCCUPANCY RATE AND	
25	OPERATING EXPENSES	
26	101. CAM and its affiliated companies	101. Ray Dep. at 146:3-10; 149:17-20
27	have occupancy rates that are below 28%.	
28	102. Some of CAM's properties are	102. Ray Dep. at 146:3-10; 149:17-20

1 totally vacant.

2 103. CAM's individual vacant
3 properties are not generating revenue while
4 empty.

103. McGinness Dep. at 79:16-17

5 **ON CAM'S OTHER LITIGATION**

6 104. Cohen denies that CAM or any of
7 its affiliated companies are known to sue
8 tenants and former tenants based on
9 unfounded accusations and greed.

104. FAC ¶ 47; Exhibit D at 34

10 105. Since 2009, CAM and its
11 affiliated entities have commenced six
12 lawsuits against tenants.

105. Litigation Summary, attached as
Exhibit M; Cohen Dep. at 198:12-201:1

13 106. CAM and its affiliated
14 companies' tenant litigation has been over
15 spaces as small as 12,500 square feet, and as
16 large as 68,779 square feet.

106. Exhibit M; Cohen Dep. at
198:12-201:1

17 107. CAM's report discloses only
18 landlord-tenant litigation CAM has filed as a
19 plaintiff, since 2009.

107. Exhibit M; Cohen Dep. at
198:12-201:1

20 108. CAM has initiated lawsuits for
21 matters other than landlord-tenant disputes.

108. FAC; *Continental Industrial
Capital v. The Davey Tree Expert Co.*, attached
as Exhibit N

23 109. The lawsuit brought by AVIC –
24 an affiliate of CAM – is on appeal.

109. FAC at ¶ 28, 31; Hansen Dep. at
110:1-6

25 **ON STATEMENTS ON THE WEBSITES**

26 **REGARDING BRADLEY COHEN'S**

27 **CRIMINAL HISTORY**

28 110. Defendants' website states that

110. Exhibit D at 25

1 Defendants' investigation has revealed "a
 2 criminal history involving fraud and money
 3 laundering for *a man with the same name*
 4 *and same approximate age*, in the real estate
 5 industry." (emphasis in original)

6 111. Defendants state on the websites
 7 that both Cohen and Brad S. Cohen have
 8 succeeded in the real estate industry, are
 9 from the same geographic area, have the
 10 same name, and are about the same age.

11 112. The portion of the bradley-cohen
 12 website contained news stories from the
 13 early 1990s and a full copy of the United
 14 States Court of Appeals for the Third
 15 Circuit's order in the *Banks v. Wolk* case,
 16 918 F.2d 418 (3d Cir. 1990), in which a man
 17 named Brad Cohen was an appellee on
 18 claims including RICO (18 U.S.C. § 1961-
 19 1968).

20 113. The content regarding a Bradley
 21 Cohen's RICO case and convictions on the
 22 website constitutes either a wholesale
 23 republication of a judicial opinion or articles
 24 about judicial activities.

25 ON THE WEBSITE'S STATEMENTS

26 REGARDING CAM'S REPUTATION

27 114. Defendants' statements about
 28 CAM refer to the investing services it

111. Exhibit D at 25

112. Exhibit D at 37-46

113. Exhibit D at 26-33, 37-46

114. Exhibit C

1 provides.

2 **ON REPUTATIONAL HARM TO**
3 **PLAINTIFFS**

4 115. CAM did a “big deal” with New
5 York Life, but does not know whether the
6 two parties will do another deal.

115. Cohen Dep. at 114, 147

7 116. As to damages from the websites,
8 CAM’s employees state only that they do
9 not know if the phone does not ring.

116. Ray Dep. at 87:22-88:6;
McGinness Dep. at 62:24-63:5; Cohen Dep. at
114:12-14

10 117. CAM is on track to have a
11 profitable year in 2013, and potentially its
12 best year yet.

117. McGinness Dep. at 99:22-100:6

13 118. More CAM employees than ever
14 before are earning at least \$150,000 per
15 year.

118. McGinness Dep. at 50:1-12;
Exhibit G

16 119. Cohen continues to earn more
17 than \$1.3 million per year in gross income.

119. Exhibit I

18 **ON PLAINTIFFS’ FALSE LIGHT CLAIMS**

19 120. Plaintiffs seek only presumed and
20 general damages.

120. Exhibit E at 3, 4:13-14, 5;
Exhibit F at 4:12-13, 5-6

21 121. CAM’s alleged loss of reputation
22 is based on Cohen’s assumptions.

121. Cohen Dep. at 113:18-114:22

23 122. Cohen’s general damages are
24 based on his sleeping patterns.

122. Cohen Dep. at 42:19-43:9,
44:14-45:24, 119:4-24; Expert Report of Dr.
Saul Faerstein, Exhibit P, at 3

25
26 123. Cohen has other stressors in his
27 life, ranging from managing CAM to the
28 anxiety he experiences from his family life.

123. Rebuttal Expert Report of Dr.
Lewis Etcoff, Exhibit O

**ON PLAINTIFFS' INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS
CLAIMS**

124. Cohen seeks to hold Defendants liable for publishing words on the Internet.

125. Since discovering the website, Cohen has had changes in his sleeping pattern and unusual dreams involving Ross Hansen.

126. Cohen has lost approximately 30 pounds.

127. Cohen's anxiety with the website has not manifested as nausea or any other physical form.

128. Plaintiffs' expert witness says Cohen's distress appears to be his own state of mind.

129. According to Plaintiffs' expert witness, the websites have become an "obsession" of Cohen's, checking the Internet "daily" and becoming "consumed by the lawsuit."

130. Cohen spends "countless hours working on the case, sending articles and notes to his attorney, reviewing evidence and deposition transcripts," according to Plaintiffs' expert witness, time which the report says Cohen believes "could be spent

124. Cohen Dep. at 272:6-8; FAC ¶¶ 9-12

125. Exhibit P at 3; Mr. Cohen's dream description email, attached as Exhibit Q; Faerstein Dep. at 154:20-155:23

126. Cohen Dep. 120:6-7; Fishman Dep. 38:24-39:2

127. Cohen Dep. 42:19-43:9, 44:14-45:24, 119:4-24, 120:17-23; *see* Exhibit P at 3-4

128. Exhibit P at 3

129. Exhibit P at 3

130. Exhibit P at 3

1 in more productive activities.”

2 **ON DEFENDANTS’ KNOWLEDGE OF**
 3 **PLAINTIFFS’ BUSINESS**
 4 **RELATIONSHIPS**

5 131. Defendants did not directly or
 6 indirectly contact any existing or potential
 7 business contact of Cohen’s or CAM’s.

131. Hansen Dep. at 35:14-36:1;
 Firebaugh Dep. at 73:13-24; 78:8-18; 87:4-
 88:11

8 132. Defendants published their
 9 concerns about Plaintiffs on the Websites,
 10 available on the Internet.

132. Hansen Dep. at 35:14-36:1;
 Firebaugh Dep. at 73:13-24; 78:8-18; 87:4-88:1

11 133. Hansen intended to relate his
 12 own experiences and feelings about
 13 Plaintiffs through the websites.

133. Hansen Dep. at 173:6-10

14 134. The funds Jeffrey Stern invested
 15 were reduced by an amount Stern is
 16 uncertain of within several million dollars,
 17 and for reasons he declined to share.

134. Stern Dep. at 47:11-48:25,
 50:10-15, 51:15-52:4, 52:9-53:17, 55:15-56:10

18 135. CAM’s claimed losses are based
 19 on relationships that either never came into
 20 being, such as the Ohio State Teachers, or
 21 which were consummated, but may or may
 22 not continue in the future, such as New York
 23 Life.

135. Cohen Dep. at 114:8-15

24 136. The economic damages allegedly
 25 caused by Defendants were losses to CAM,
 26 rather than a direct loss to Cohen himself.

136. Cohen Dep. at 114:8-15

1 Dated: October 30, 2013

Respectfully submitted,

2 /s/ Ronald D. Green

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